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Attorneys for Defendant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ELIZABETH LANNON,)	
)	NO.
Plaintiff,)	
)	
vs.)	NOTICE OF REMOVAL UNDER
)	28 U.S.C. §§ 1332 and 1441(a) and (b)
ADVANCED BIONICS CORPORATION,)	(DIVERSITY)
)	
Defendant.)	

TO: The Honorable Judges of the United States District Court for the Western District of Washington:

The Removing Party, Advanced Bionics Corporation (hereinafter "Advanced Bionics"), by the undersigned attorney, respectfully shows this Court:

Defendant Advanced Bionics hereby removes the above-captioned case from the King County Superior Court to the United States District Court for the Western District of Washington pursuant to 28 U.S.C. §§ 1332 and 1441(a) and (b) for the reasons stated below:

STATE COURT ACTION

1. On or about July 22, 2009, Plaintiff Elizabeth Lannon (hereinafter "Lannon") commenced an action now captioned Elizabeth Lannon v. Advanced Bionics Corporation, bearing Cause No. 09-2-26208-0. The action is currently pending in the Superior Court of the State of Washington for the County of King.

1 - NOTICE OF REMOVAL

LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.
230 South Second Street • P.O. Box 22680
Yakima, Washington 98907-2680
Telephone (509) 575-8500

2. Among other allegations, Lannon alleges that a cochlear implant manufactured by Advanced Bionics was implanted in her and that the implant was defective because it failed after five or six years of use. (See Complaint ¶¶3.2 and 3.3). Lannon's prayer for relief seeks special and general damages. (See Complaint ¶¶5.1 and 5.2).

TIMELY REMOVAL

3. The Summons and Complaint were served upon Advanced Bionics on July 22, 2009. (A copy of the Summons and Complaint is attached as Exhibit A).

4. This Notice of Removal is being filed within thirty (30) days after receipt by Advanced Bionics in accordance with 28 U.S.C. §1446(b).

FEDERAL JURISDICTION

5. This is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. §1441 because (i) more than \$75,000, exclusive of interest and costs, is in controversy in this action, and (ii) the controversy is between citizens of different states and/or citizens or subjects of foreign states. No party properly joined in this action as a defendant is a citizen of the State of Washington, the state in whose courts the action is currently proceeding. The citizenship of the parties is as follows:

- a. Plaintiff Elizabeth Lannon is now and at the time this action was commenced was a resident of the state of Oregon.
- b. Defendant Advanced Bionics Corporation is now and at the time this action was commenced was a California corporation with its principle place of business in Valencia, California.
- c. The Complaint does not set forth a dollar amount prayed for, nevertheless, pursuant to Civil Rule 101 of the Local Rules for the United States district Court for the Western District of Washington, Defendant Advanced Bionics has a good faith belief that Lannon is seeking damages in excess of \$75,000, because she alleges that she suffered severe pain, anguish and discomfort as well as lost wages as a result of the failure of her cochlear implant. Furthermore, Lannon made a pre-suit demand relating to the

1 same alleged failure of her cochlear implant in which she claimed mental
2 and physical pain and suffering for the past several years.

3
4 **VENUE**

5 7. Because the Complaint contains claims arising under federal law, the United
6 States District Court for the Western District of Washington is the proper district and division to
7 which this action should be removed pursuant to 28 U.S.C. §1441(a) and (b).

8
9 **STATE COURT DOCUMENTS ATTACHED**

10 8. A copy of the Summons and Complaint is attached hereto as Exhibit A. A copy
11 of the Notice of Appearance is attached hereto as Exhibit B. Based upon information and belief,
12 these documents represent all pleadings that have been filed in the state court action.

13
14 **NOTICE**

15 9. A copy of the Notice of Removal is being served upon Lannon's counsel this date.
16 Upon filing this Notice of Removal, Advanced Bionics will promptly file a written Notice to
17 State Court of Removal, attaching a copy of this Notice of Removal, with the clerk of courts of
18 the Superior Court of the state of Washington, County of King.

19
20 **RELIEF REQUESTED**

21 10. Defendant Advanced Bionics respectfully requests that this Court accept this
22 Notice of Removal and that it assume jurisdiction of this action and issue such further orders and
23 process as may be proper and authorized by law.

24
25 Respectfully submitted this 21st day of August, 2009.

26
27 s/ Jerome R. Aiken
28 WSBA # 14647
29 Attorneys for Defendant
30 Meyer, Fluegge & Tenney, P.S.
31 230 South Second Street
32 P.O. Box 22680
33 Yakima, Washington 98907
34 509/575-8500; FAX: 509/575-4676
Email: aiken@mftlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2009, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF System which will send notification of such filing to the following:

John A. Barlow

barlow@walstead.com

By: /s/ Jerome R. Aiken
WSBA # 14647
Attorneys for Defendant
Meyer, Fluegge & Tenney, P.S.
230 South Second Street
P.O. Box 22680
Yakima, Washington 98907
509/575-8500; FAX: 509/575-4676
Email: aiken@mftlaw.com

EXHIBIT A

1/00 g.m.

7-22-09

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ELIZABETH LANNON,

Plaintiff,

v.

ADVANCED BIONICS CORPORATION,

Defendant.

No. 09-2-26208-0 SEA

SUMMONS

THE STATE OF WASHINGTON to the said: ADVANCED BIONICS CORPORATION..

A lawsuit has been started against you in the above-entitled Court by Elizabeth Lannon, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within twenty (20) days after the service of this Summons or, if served upon you personally out of the state of Washington, then within sixty (60) days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiff is entitled to what she asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

You may demand that plaintiff file this lawsuit with the Court. If you do so, the demand must be in writing and must be served upon plaintiff. Within fourteen (14) days after you serve the demand, the plaintiff must file this lawsuit with the Court, or the service on you of this Summons and Complaint will be void.

PAGE 1 OF SUMMONS

COPY

Walstead Mertsching PS
Civic Center Building, Third Floor
1700 Hudson Street
PO Box 1549
Longview, Washington 98632
(360) 423-5220

7-22-09

6

1 If you wish to seek the advice of an attorney in this matter, you should do so promptly so that
2 your written response, if any, may be served on time.

3 This ~~Summons~~ is issued pursuant to Rule 4 of the Superior Court Civil Rules of the state of
4 Washington.

5 DATED: July 16, 2009.

6 s/ John A. Barlow

7 JOHN A. BARLOW (WSB #3440)

8 Of Attorneys for Plaintiff

9 Walstead Mertsching, P.S.

10 P.O. Box 1549

11 Longview, WA 98632

12 Telephone: (360) 423-5220

13 Fax: (360) 423-1478

14 E-mail: barlow@walstead.com

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ELIZABETH LANNON,

Plaintiff,

v.

ADVANCED BIONICS CORPORATION,

Defendant.

No. 09-2-26208-0 SEA

COMPLAINT FOR
PERSONAL INJURIES, BREACH
OF WARRANTY, ETC.

COMES NOW the Plaintiff above-named, and states and alleges as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the parties and subject matter of this action.

II. PARTIES

2.1 Plaintiff is single, and is a resident of the State of Oregon.

2.2 At all times material hereto, Advanced Bionics was a foreign corporation doing business in the State of Washington, and the County of King. Advanced Bionics Corporation is the manufacturer of an implantable cochlear stimulator called the "Clarion."

III. DEFECTIVE PRODUCT

3.1 **Cochlear Implant.** On March 7, 2000, Plaintiff was totally without hearing in her

1 right ear, and an operation was performed on her at the Oregon Health Sciences University in
 2 Portland, Oregon, in which a Clarion model AB-511 device was implanted in her right ear
 3 (hereinafter referred to as "Cochlear Implant").

4 **3.2 Recall.** On September 27, 2004, Advanced Bionics issued a recall of all of
 5 unimplanted Clarion implantable stimulators due to a problem of excessive moisture in the internal
 6 circuitry of the device that caused malfunctions. Because Plaintiff's device had already been
 7 implanted in her ear, her device was not recalled, although the device carried the same risk of
 8 problems as the devices that were recalled. According to press releases by the Defendant itself, one
 9 of the signs that a Clarion might be starting to fail was "a sudden sensation of discomfort or pain"
 10 and/or "a sudden loud noise or popping sound."

11 **3.3 Defect.** Over the years Plaintiff encountered problems with the hearing in her right
 12 ear, although she was never sure what the problems were coming from. The problems she
 13 encountered were exacerbated some time in 2006 when Plaintiff started to suffer an explosive sound
 14 in her right ear that totally disabled her due to its intensity. Eventually, Plaintiff was referred to the
 15 University of Washington hospital, where she met with physicians, audiologists, and with
 16 representatives of Advanced Bionics. On July 24, 2007, representatives of Advanced Bionics,
 17 including an audiologist and an engineer, were present at the University of Washington hospital and
 18 met with, and tested, Plaintiff. No conclusions were reached at that time. Due to problems Plaintiff
 19 was having with the device, an operation was performed at the University of Washington hospital
 20 on October 19, 2007, and the Cochlear implant was removed and replaced with a newer device. The
 21 postoperative diagnosis was "cochlear implant failure." To its credit, Advanced Bionics paid the
 22 expenses of the surgery.

23 **3.4 Admission of Defect.** In a letter dated August 31, 2007, attached hereto as "Exhibit
 24 1", Advanced Bionics Corporation, through its President and Co-Chief Executive Officer, offered
 25 its sincerest apologies for the difficulties that Plaintiff had experienced with her cochlear implant,
 26 and referred to the Advanced Bionics comprehensive 10 year warranty that would cover the

1 replacement implant.

2 **IV. CAUSATION AND DAMAGES**

3 4.1 As a direct and proximate result of the negligence and/or breach of warranty of
4 Defendant, Plaintiff suffered severe pain, anguish and discomfort, and she also lost wages, from
5 both not being able to work after the loud noises went off in her ear, and also as a result of the
6 surgery to remove the defective implant and replace it with a working one.

7 **V. DEMAND FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

9 5.1 For special damages in an amount to be proven at the time of trial;

10 5.2 For general damages in an amount to be proven at the time of trial;

11 5.3 For costs and disbursements, including reasonable attorney fees incurred in bringing
12 this action that may be allowed by any rule or statute;

13 5.4 For such other and further relief as this court deems just and equitable.

14 DATED: July 16, 2009.

15
16 s/ John A. Barlow
17 JOHN A. BARLOW, WSB# 3440
18 Of Attorneys for Plaintiff
19 Walstead Mertsching, P.S.
20 P.O. Box 1549
21 Longview, WA 98632
22 Telephone: (360) 423-5220
23 Fax: (360) 423-1478
24 E-mail: barlow@walstead.com
25
26

10

EXHIBIT B

11

CERTIFICATE OF TRANSMITTAL

On this day, the undersigned sent to the attorneys of record for plaintiffs-defendants a copy of this document by U.S. Mail, postage prepaid, ~~or by Attorneys Messenger Service~~ and email. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date

Place

Signed

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, KING COUNTY

ELIZABETH LANNON,

NO. 09-2-26208-0 SEA

Plaintiff,

vs.

NOTICE OF APPEARANCE

ADVANCED BIONICS CORPORATION,

Defendant.

TO: ELIZABETH LANNON, Plaintiff

TO: JOHN A. BARLOW, Attorney for Plaintiff

YOU ARE HEREBY NOTIFIED that MEYER, FLUEGGE & TENNEY, P.S., without waiving objections as to improper venue, lack of jurisdiction, insufficiency of process, or insufficiency of service of process, hereby appear as attorneys for ADVANCED BIONICS CORPORATION, defendant in the above-entitled action, and you are notified that service of all further pleadings, notices, documents, or other papers herein, exclusive of process, may be had upon said defendants by serving the undersigned attorneys at their address below stated.

DATED THIS 19th day of August, 2009.

s/

JEROME R. AIKEN, WSBA #14647

Meyer, Fluegge & Tenney, P.S.

Attorneys for Defendant

P. O. Box 22680

Yakima, WA 98907

Telephone: 509/575-8500

Fax: 509/575-4676

E-mail: aiken@mftlaw.com

NOTICE OF APPEARANCE

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12